

## REMARKS

Claims 1-2, 5-7, 18-19, 24-25 and 30-39 are pending in the application. In the Office Action dated April 6, 2004, the Examiner took the following action: (1) objected to the drawings on grounds that they fail to show a mesh member as recited in the claims; (2) rejected claims 1-2, 5-7, 18-19, 24-25 and 30-39 under 35 USC § 112, first paragraph as failing to comply with the enablement requirement; (3) rejected claims 1-2, 4-7, 18-19, 24-25 and 30-35 under 35 USC § 103(a) as being unpatentable over Hammond (U.S. 5,921,046) in view of Ellison (U.S. 5,881,524), and further in view of Berrenberg (U.S. 4,879,855). Applicant respectfully requests reconsideration of the application in view of the foregoing amendments and the following remarks.

**I. Rejection of claims 1-2, 5-7, 18-19, 24-25 and 30-39 under 35 USC**  
**§ 112, first paragraph and Objection to the Drawings.**

The undersigned attorney expresses appreciation to the Examiner for his courtesy in conducting a telephone interview on June 22, 2004. During this interview, the rejection of the claims under 35 USC § 112, first paragraph, and the objection to the drawings were discussed.

Agreement was reached between the Examiner and the undersigned attorney that adequate support does indeed exist in the specification as originally filed for the claim limitation “*a non-planar mesh member having a plurality of first portions embedded within the facing layer and a plurality of second portions embedded within the molded block,*” and that this limitation does not constitute new matter.

Specifically, the original disclosure provides support for the subject claim limitation in several places. First, a non-planar mesh member 108 is shown at the top of Figure 2A. It has a plurality of first portions (shown in lighter, thinner dashed lines) embedded within the facing layer 106A. At page 7, lines 24-26, the original detailed description states “In one embodiment, wire mesh 108A is bent into an undulating form and is partially embedded in the cementitious material.” Furthermore, with reference to Figure 3, the original description states at

page 8, lines 1-3: "a facing 96, with or without wire mesh 108 embedded therein may be bonded to a block by positioning it in the mold 10 before the foaming mixture is added to the mold 10." The original detailed description then states at page 8, lines 18-20, "If the facing 96 includes the exposed wire mesh 108, the expanding foam penetrates the mesh 108A to provide a superior mechanical hold on the facing 96." Upon review of these passages and figures with the Examiner, the Examiner agreed that the limitation is not new matter.

It was further agreed, however, that pursuant to M.P.E.P Section 608.01(o), that Applicant will make appropriate amendment of the specification so as to provide clear support and antecedent basis in the specification for the nomenclature used in the claims. Therefore, to provide the desired clarity for the nomenclature of the subject claim limitation, Applicant has amended the specification as follows:

(1) A replacement drawing sheet 2 of 5 is submitted concurrently herewith that includes additional reference numerals, lines, and arrows as agreed by the Examiner during the telephone interview to clarify the first and second portions of the non-planar mesh member. Specifically, in Figure 2A, reference numeral "109" is used to refer to the plurality of first portions of the non-planar mesh member 108 that are embedded within the facing layer, and reference numeral "111" is used to refer to the plurality of second portions that are embedded within the molded block during the molding process.

(2) In the specification, the paragraph beginning on page 7, line 20, and extending to page 7, line 26, has been amended as shown below:

-- In order to ensure that the mold 104A produces a planar, untwisted facing, the mold 104A may be pressed into level, wet concrete, and one of the side plates 12, 14 may be laid on top of it until the concrete has cured. The frame members 100A, 102A may then be clamped together about the mold 104. A cementitious material such as Portland cement may then be poured into the mold. In one embodiment, wire mesh 108A is bent into an undulating form and is partially embedded in the cementitious material. The wire mesh may be a material such as chicken wire. As shown in Fig. 2A, the wire mesh 108 is a non-planar mesh member having a

plurality of first portions 109 embedded within the facing layer 106A (shown in lighter, dashed lines to depict embedded portions of the mesh 108), and a plurality of second portions 111 (shown in darker lines) that become embedded within a molded block during the molding process, as described more fully below. --

(3) In the specification, the paragraph beginning on page 8, line 1, and extending to page 8, line 11, has been amended as shown below:

-- With reference to Fig. 3, a facing 96, with or without wire mesh 108 embedded therein (e.g. a plurality of first portions 109 embedded in the facing 96 as shown in Fig. 2A) may be bonded to a block by positioning it in the mold 10 before the foaming mixture is added to the mold 10. As shown, the outwardly facing surface of the facing 96 is irregular. Thus, if the irregular surface of the facing 96 were to be pushed into contact with the side plate 14 by the pressure of the expanding foam within the mold 10, it is possible that the facing 96 might crack. In order to avoid that, spacers 98, 100 are placed between the flange 112 of the facing 96 and the side plate 14 along the upper and lower edges of the facing 96. The size and shape of these spacers 98, 100 is chosen to provide a small gap between the facing 96 and the side plate 14 as well as to provide a small gap between the upper and lower edges of the facing 96 and the top and bottom plates 20, 22 of the mold 10. --

(4) In the specification, the paragraph beginning on page 8, line 12, and extending to page 8, line 22, has been amended as shown below:

-- In order to make a block including a facing 96, the side plates 12, 14 and end plates 16, 18 are positioned on the base plate 20. The facing 94 and facing supports 96, 98 are positioned immediately behind the side plate 14. The mixture for the urethane foam may then be poured into the mold and the top plate 22 may then be secured in place by the wing nut 26 on the retaining rod 24. Once the two components of the foaming system have been mixed, the foam is generated very rapidly, and fills the interior of the mold 10. If the facing 94 includes the exposed

wire mesh 108, the expanding foam penetrates the mesh 108A to provide a superior mechanical hold on the facing 94. More specifically, the plurality of second portions 111 of the non-planar mesh member 108 (Fig. 2A) become embedded within the molded block. However, it has been discovered that is the two-part urethane foam system produces a foam which adheres sufficiently strongly to the back surface of a cementitious facing 94 that the embedded mesh 108 may not be necessary. --

In view of the foregoing amendments and remarks, and the agreement reached during the telephone interview on June 22, 2004, Applicant respectfully requests reconsideration and withdrawal of the rejection of the claims under 35 USC § 112, first paragraph, and the objection to the drawings.

Moreover, in view of the Examiner's concession that the above-referenced limitation does not constitute new matter, Applicant requests that the Examiner's determination that the subject office action be made "final" be withdrawn so that prosecution on the merits may proceed.

## ***II. Rejection of claims 1-2, 4-7, 18-19, 24-25 and 30-35 under 35 USC***

### ***§ 103(a).***

In the Office Action dated April 6, 2004, the Examiner stated that since the newly-added claim limitation "*a non-planar mesh member having a plurality of first portions embedded within the facing layer and a plurality of second portions embedded within the molded block*" is new matter, it was "not considered", and the rejections of the claims under 35 USC § 103(a) was maintained and made final. However, in view of the Examiner's reconsideration and concession that the subject limitation is not new matter, and for the reasons set forth in Applicant's Response filed on or about January 16th, 2004, Applicant respectfully requests reconsideration and withdrawal of the rejections of claims 1-2, 4-7, 18-19, 24-25 and 30-35 under 35 USC § 103(a). The newly-added limitation patentably defines over the teachings of the prior art, including Hammond, Ellison, and Berrenberg.

## CONCLUSION

In light of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of all of the pending rejections and objections, and requests that this case proceed to allowance. If there are any remaining matters that can be handled in a telephone conference, the Examiner is kindly requested to telephone the undersigned attorney, Dale C. Barr, at (206) 381-3300.

Respectfully submitted,

BLACK LOWE & GRAHAM<sup>PLLC</sup>



Dale C. Barr  
Registration No. 40,498  
Direct Dial: 206.957.2463

Enclosure:

Replacement Drawing Sheet 2 of 5

## MAIL CERTIFICATE

I hereby certify that this communication is being deposited with the United States Postal Service via first class mail under 37 C.F.R. § 1.08 on the date indicated below addressed to: MAIL STOP AMENDMENT, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22315-1450.

June 30, 2004  
Date of Deposit

Sandra K. Duncan  
Sandra K. Duncan